In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.175 of 2003.

Date of decision:26.3.2007.

Gulshan Kumar

....Petitioner.

Versus

Smt.Krishna Wati and others.

....Respondents.

...

Coram; Hon'ble Mr. Justice S.N.Aggarwal.

...

Present; Mr. Pritam Saini Advocate for the petitioner.

Ms.Monica Chhibbar Advocate for the respondents.

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Judgment.

S. N. Aggarwal, J.

Gurdial Singh (now deceased) (predecessor-in-interest of the respondents) filed a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (in short Rent Act) against the petitioner. The grounds pleaded were non payment of arrears of rent with effect from 1.1.1988 to 31.10.1990, impairing the value and utility of the shop materially and personal necessity.

It was resisted by the petitioner tenant. Relationship of landlord and tenant was denied as the shop was allegedly rented out to the petitioner by Surta Ram son of Munshi Ram. The rate of rent was also disputed and it

was pleaded that the entire rent has been paid. The other grounds of ejectment were also denied.

Issues were framed.

The parties led the evidence.

The learned Rent Controller vide judgment dated 21.12.1995 held that the relationship of landlord and tenant was not proved and dismissed the ejectment petition.

Gurdial Singh landlord filed an appeal against the judgment dated 21.12.1995 passed by the Rent Controller. The learned Appellate Authority reached the conclusion that Gurdial Singh was the owner of the shop in dispute and Surta Ram being the brother of Gurdial Singh was acting on his behalf and, therefore, the relationship of landlord and tenant between Gurdial Singh and the petitioner-tenant was proved. Accordingly, the appeal was accepted vide judgment dated 30.4.1998 and the matter was remanded to the learned Rent Controller for re-deciding the ejectment petition on merits.

The learned Rent Controller vide order dated 23.2.1999 accepted the rent petition and ordered ejectment on the ground of non payment of arrears of rent and personal necessity.

The petitioner filed an appeal against the said judgment. The learned Appellate Authority up-held the finding of fact recorded by the learned Rent Controller and dismissed the appeal vide judgment dated 31.10.2002.

Hence, the present Civil Revision.

The submission of learned counsel for the petitioner was that

the relationship of landlord and tenant was not proved.

This submission has been considered.

The respondent has proved on the file a copy of sale deed dated 21.2.1966 as Exhibit P-1. Through this sale deed, Gurdial Singh had purchased the plot over which the shop in dispute was constructed. Obviously, therefore, Gurdial Singh was the owner of the shop in dispute. Admittedly he was serving in the army where he was appointed as a Carpenter on 12.6.1981 and was discharged on 31.1.1990. Admittedly, Surta Ram who had allegedly inducted the petitioner in the shop in dispute as a tenant was real brother of said Gurdial Singh. Since Gurdial Singh was serving in the army and Surta Ram had inducted the petitioner as a tenant in the shop in dispute, owned by said Gurdial Singh, therefore, obviously Surta Ram was acting on behalf of his brother Gurdial Singh,. Therefore, the relationship of landlord and tenant between Gurdial Singh and the petitioner is clearly proved by legal presumptions and inferences which arise from the proved facts.

Surta Ram does not claim any interest in the suit property contrary to the interest of Gurdial Singh or after his death against his legal representatives i.e. the respondents. The petitioner has not examined Surta Ram as a witness nor any evidence has been produced by the petitioner to prove that Gurdial Singh was not the owner of the suit property or if Surta Ram was the owner of the suit property or that Surta Ram was dealing with this property independently in his own right. Therefore, there is no force in the submission of the learned counsel for the petitioner that Surta Ram was the landlord in his own right.

Moreover, the petitioner has also failed to produce lease deed allegedly executed by Surta Ram in favour of the petitioner. The excuse taken by the petitioner was that the said rent note or rent deed was in possession of Surta Ram. If, it was so, it was the bounden duty of the petitioner to summon Surta Ram to prove the rent deed or rent note. In the alternative, the petitioner could summon the said rent deed/rent note from the possession of Surta Ram or could prove the same by leading secondary evidence. That document would have been the best piece of evidence to prove that Surta Ram was acting in his own right or if he had inducted the petitioner as a tenant on behalf of his brother Gurdial Singh. The with-holding of that evidence by the petitioner clearly proves that Gurdial Singh was the owner of the shop in dispute and the landlord of the petitioner and Surta Ram was acting on his behalf being his real brother and as his agent.

There is still another ground to conclude that relationship of landlord and tenant between the petitioner and Gurdial Singh was proved. Admittedly, ejectment petition filed by Gurdial Singh was rejected by the Rent Controller earlier vide order dated 21.12.1995 on the ground that the relationship of landlord and tenant did not exist between them. Gurdial Singh had filed an appeal against the said judgment which was accepted by the Appellate Authority vide judgment dated 30.4.1998 and it was held that relationship of landlord and tenant exist between the petitioner and Gurdial Singh. The matter was remanded by the Appellate Authority to the Rent Controller for deciding the rent petition on merits. Once the Appellate Authority in the judgment dated 30.4.1998 had up-held the relationship of landlord and tenant between the parties and that judgment having become

final, the petitioner cannot turn back and now deny the relationship of landlord and tenant between the parties. The point of relationship of landlord and tenant between the parties having been decided by the Appellate Authority in this very case that chapter was over.

The submission of learned counsel for the petitioner was that the petitioner had filed an application before the Appellate Authority for permission to lead additional evidence. Through the additional evidence, the petitioner wanted to produce a copy of order dated 30.7.2001 passed in Rent Appeal No.277 of 1998. That appeal was between Gurdial Singh on one hand and another tenant on the other . In the said order dated 30.7.2001, the relationship of landlord and tenant between Surta Ram and other tenant was proved. If the petitioner had been permitted to produce a copy of order dated 30.7.2001 before the Appellate Authority, then it would have been clearly proved that the relationship of landlord and tenant did not exist between the petitioner on one hand and Gurdial Singh or his legal representatives on the other. It was also submitted that the petitioner also wanted to produce on the file copy of assessment order for the year 1998-99 dated 6.12.2001 passed by Municipal Committee, Ladwa by which the mutation of the shop in dispute has been changed in favour of Surta Ram. It was further submitted that both these documents were very material to rebut the relationship of landlord and tenant between the petitioner on one hand and the respondents on the other. Hence, the petitioner has been denied an opportunity to lead valid piece of evidence.

This submission has been considered. The entry in the assessment register or passing of order by the Municipal Committee, Ladwa

in the assessment register neither determine the ownership of the shop nor it determines the the relationship of landlord and tenant between the parties. Therefore, copy of order dated 6.12.2001 passed by Municipal Committee, Ladwa for the year 1998-99 was not a good piece of evidence to determine the controversy in the present case.

Even the order dated 30.7.2001 between the respondent on one hand and another tenant on the other was not material. When the evidence in the present case was sufficient to hold the relationship of landlord and tenant between the petitioner on one hand and Gurdial Singh on the other, then no other evidence could have been looked into. Moreover, the judgment dated 30.4.1998 which existed between the parties in this very case regarding relationship of landlord and tenant between the parties it had become final. When the controversy regarding the relationship of landlord and tenant between the parties had become final, it was no more open to debate. Moreover, it was already proved on the file that Gurdial Singh was the owner of the said plot over which the shop in dispute was built. Moreover, the petitioner having failed to lead best evidence to prove that Surta Ram was acting in his own right while inducting the petitioner as a tenant in the shop in dispute, no more evidence could have helped the cause of justice. The said judgment dated 30.7.2001 was passed on the basis of evidence led in that case nor that judgment was inter-se between the parties.

Therefore, there is no force in the submission of the learned counsel for the petitioner that the refusal of the learned Appellate Authority to allow the petitioner to produce on record a copy of order dated 30.7.2001 passed by the Appellate Authority in another rent appeal or the refusal of

permission to the petitioner to produce on the file a copy of order dated 6.12.2001 passed by the Municipal Committee, Ladwa has led to miscarriage of justice. This submission has no legs to stand.

The net result that emerges is that the relationship of landlord and tenant existed between the petitioner on one hand and the respondents on the other.

The next submission of learned counsel for the petitioner was that the petitioner had produced the rent receipts to prove that he had made the payment of rent for the disputed period i.e. from 1.1.1988 to 30.10.1990. Those rent receipts were rejected by the learned Appellate Authority on the plea that some of the receipts produced earlier by the petitioner were rejected by the Appellate Authority in the judgment dated 30.4.1998 by holding the same to be forged documents and for the same reasoning, the rent receipts produced thereafter in this case were disbelieved and rejected by the Appellate Authority. The petitioner had not only produced photostat copies of the extract of Bahi for the period under dispute but he had also produced some of the rent receipts as Exhibits D-36 to D-45 some of which pertain to the relevant period i.e. from 1.1.1988 to 31.10.1990. Those receipts were rejected by the Appellate authority for the following reasons:-

> "The tenant-appellant has also relied upon receipts Ex.D36 to Ex.D45, some of which pertained to the relevant period but in view of the conduct of the tenant-appellant and in view of the declaration of alleged rent receipts Ex.D4 to D16 as forged and fabricated documents by the then learned Appellate Authority, the receipts Exs.D36 to Ex.D46 also inspire no confidence and

it has to be held that they are also forged and fabricated documents particularly in the absence of examination of Surta Ram to whom the rent was allegedly paid. Therefore, there is nothing on the file to infer that the arrears of rent we.f. 1.1.1988 to 31.10.1990 as demanded in the rent petition by the petitioner-landlord were paid to the petitioner-landlord or on his behalf to Surta then it can be easily inferred that the tenant-appellant is in arrears of rent particularly in view of the fact that no rent receipt in any form was ever produced at the time of assessment of arrears of rent by the then learned Rent Controller on 7.12.1991. Therefore, it has to be held that the learned Rent Controller has rightly held the tenant to be in the arrears of rent while holding that the rent receipts Ex.D4 to D.16 were handiwork forgery."

This Court,however, does not agree with the reasoning given by the Courts below for rejecting the rent receipts from being taken into consideration. The genuineness of these rent receipts was to be analysed independently and these were not to be rejected merely because some earlier receipts were held to be forged.

The respondents have also proved the ground of personal necessity. Gurdial Singh had retired from military service. He required the shop for his own business as he was an experienced carpenter and he had no other shop to run the business nor he had vacated any premises in the urban area of Ladwa after the commencement of Rent Act. Both the Courts have recorded concurrent finding of fact that ground of personal necessity is

proved and this Court finds no reason to disturb the said finding of fact recorded by the Courts below and the ground of personal necessity is upheld.

There is no merit in the present Revision Petition and the same is dismissed.

March 26,2007. (S. N. Aggarwal)
Jaggi Judge